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Applicant's or agent's file reference 484997 NJC	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/NZ2003/000206	International Filing Date (day/month/year) 15 September 2003	Priority Date (day/month/year) 2 October 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A61M 16/06, A62B 9/04, 18/08		
Applicant FISHER & PAYKEL HEALTHCARE LIMITED et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet. <input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of sheet(s).
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input checked="" type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input checked="" type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 28 April 2004	Date of completion of the report 21 January 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer Sue Thomas Telephone No. (02) 6283 2454

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be nonobvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos: 9-14, 20

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claim Nos. 9-14, 20

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the standard.

☐ the computer readable form has not been furnished or does not comply with the standard.

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☒ not complied with for the following reasons:

Claims 1-8, 15 have a first special technical feature of a cord pulling a releasable connecting means to release a strap from the mask

Claims 16-19, 21-23 have a second special technical feature of actuating a release mechanism between a securement and an engaging means to separate these two means.

As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☐ all parts.
- ☒ the parts relating to claims Nos. 1-8, 15-19, 21-23

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims 6-8, 17-19, 21-23	YES
	Claims 1-5, 15, 16	NO
Inventive step (IS)	Claims 6-8, 17-19, 21-23	YES
	Claims 1-5, 15, 16	NO
Industrial applicability (IA)	Claims 1-8, 15-19, 21-26	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)**NOVELTY (N) Claims 1-5, 15, 16**

Claims 1-5, 15, 16: All the defined features of claim 1 are provided in US 5441046 as follows:

At least one strap	Figure 2
One strap end in use flexibly coupled to releasably connecting means on one side of mask	Figure 2
Other end flexibly coupled to attachment means at other side of mask	Figure 2
Strap extends around back of user's head	Item 80
Cord attached to releasably connecting means	Figures 10A and 10B
When cord pulled by user, releasably connecting means causes strap to be released from mask.	Column 5

All the defined features of the remaining claims are similarly provided by US 5441046.

INVENTIVE STEP (IS) Claims 1-5, 15, 16

Claims 1-5, 15, 16: Since these claims lack novelty, they also lack inventive step

VII. Certain defects in the international application.

The following defects in the form or contents of the international application have been noted:

Claims 9-14 are not in the form of complete claims.

Claim 20 is appended to claim 11, consequently the scope of protection sought cannot be determined.